

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JAB PRODUCE, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	Civil Action No. 1:08-CV-01899
	:	Hon. Milton I. Shadur
BIMEX, INC. a/t/a	:	
Roselle International Food Market, et al.	:	
	:	
Defendants.	:	

**AFFIDAVIT OF STEVE SERCK IN SUPPORT OF
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

STATE OF ILLINOIS :

COUNTY OF COOK :

Steve Serck, being duly sworn, deposes and says:

1. I am the President of JAB Produce, Inc. ("JAB") and make this Affidavit in support of Plaintiff's Motion for Entry of Default Judgment.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this affidavit are within my personal knowledge. If called upon as a witness, I could and would competently testify to all facts stated in this affidavit.

3. JAB is an Illinois corporation located in Chicago, Illinois, which sells wholesale quantities of perishable agricultural commodities ("produce"). JAB is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a *et. seq.* ("PACA").

4. Defendant Bimex, Inc. a/t/a Roselle International Food Market ("Roselle") is a corporation subject to license under PACA.

5. Defendant Mirosław Kubas was an officer and director of Roselle, and in a position of control over the PACA trust assets of JAB.

6. Defendant Wojciech Dziewonski was an officer and director of Roselle, and in a position of control over the PACA trust assets of JAB.

7. As President, my responsibilities include: 1) overseeing all sales; 2) supervising collection of the accounts receivable for all of JAB's sales, including Roselle's account which is the subject of the present motion; and 3) maintaining the books and records of JAB. I have custody and control of the sales and accounts receivable records of JAB as they relate to Roselle and I am thoroughly familiar with the manner in which those records are compiled.

8. The sales and accounts receivable records of JAB, including invoices and account statements, are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are made under my direction and supervision by employees whose duty it is to prepare such documents.

9. Between June 25, 2007 and July 30, 2007, JAB sold and delivered to Roselle, in interstate commerce, various wholesale lots of produce worth \$8,205.00, of which \$5,205.00 remains unpaid. A statement of account is attached hereto as Exhibit 1.

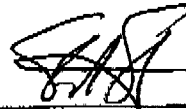
10. Defendants accepted the produce received from JAB.

11. JAB preserved its interest in the PACA trust in the unpaid amount of \$5,205.00 by timely delivering invoices to Defendants which include the language required by 7 U.S.C. § 499e(c)(4). Copies of the invoices JAB sent to Defendants are attached hereto as Exhibit 2. Each of the invoices also contains a provision requiring Defendants to pay interest at the rate of 1.5% per month and reasonable attorneys' fees in the event collection action is necessary.

12. Defendants were obligated to hold in trust all produce-related assets received from the sale of produce in order to pay \$5,205.00 to JAB. Plaintiff is owed a balance due of \$5,205.00 plus interest at 1.5% per month of \$1,416.71 through July 18, 2008, and attorneys' fees. See Exhibit 1 for a breakdown of the interest accrued through July 18, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 2008.



STEVE SERCK, President
JAB Produce, Inc.

EXHIBIT "1"

03/31/08

JAB Produce, Inc.
Accounts Receivable Detail

Page: 1

Customer: R6305, BIMEX INC./ ROSELLE INTL

Phone#

Date	Ticket #	Code	Amount	Paid	Credit	Balance
06/25/07	614312	DI	382.00	68.50	0.00	313.50
06/29/07	615373	DI	485.00	0.00	0.00	485.00
06/29/07	615374	DI	29.00	0.00	0.00	29.00
06/29/07	615401	DI	40.00	0.00	0.00	40.00
07/02/07	615815	DI	376.00	0.00	0.00	376.00
07/02/07	615852	DI	584.50	0.00	0.00	584.50
07/02/07	615858	DI	40.00	0.00	0.00	40.00
07/06/07	616648	DI	981.50	0.00	100.00	881.50
07/06/07	616657	DI	12.00	0.00	0.00	12.00
07/06/07	616732	DI	93.50	0.00	0.00	93.50
07/09/07	617168	DI	794.00	0.00	0.00	794.00
07/09/07	617231	DI	44.00	0.00	0.00	44.00
07/13/07	618285	DI	648.00	0.00	0.00	648.00
07/16/07	618648	DI	476.75	0.00	0.00	476.75
07/20/07	619781	DI	886.50	0.00	0.00	886.50
07/20/07	619816	DI	31.00	0.00	0.00	31.00
07/20/07	619820	DI	87.00	0.00	0.00	87.00
07/20/07	619837	DI	90.00	0.00	0.00	90.00
07/25/07	620486	DI	1114.75	0.00	0.00	1114.75
07/27/07	621262	DI	532.00	0.00	0.00	532.00
07/27/07	621306	DI	42.00	0.00	0.00	42.00
07/30/07	621624	DI	604.00	0.00	0.00	604.00
Current		3 Days	10 Days	24 Days	Over 31	Total
0.00		0.00	0.00	0.00	8205.00	8205.00

EXHIBIT "2"

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154

Invoice: 614312

06/25/07

Customer: BIMEX INC./ ROSELLE INTL

Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

8 CS Broccoli			
Dole 14 count	@11.50	=	92.00
2 CS Broccoli Crowns			
Dole // Crowns	@13.00	=	26.00
2 CS Peppers, Yellow (11#)			
WHITE BOX/CANADIAN	@14.00	=	28.00
3 CS Peppers, Red (11#)			
veri fine	@8.00	=	24.00
1 CS Orange Peppers 11 lb.			
PERO	@12.00	=	12.00
1 CS Escarole			
JERSEY CRATE	@11.00	=	11.00
1 CS Endive			
JERSEY CRATE	@12.50	=	12.50
2 CS Boston Lettuce			
CA / RATTO	@13.00	=	26.00

Continued

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) In the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL

JAB PRODUCE, INC.

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06/25/07

Customer: BIMEX INC./ ROSELLE INTL

Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

1 CS Swiss Chard (Green)			
RATTO 24'S	@22.50	=	22.50
5 CS Green Onions			
Topless medium blue bo	@11.50	=	57.50
2 CS Spinach, Bunch			
Topless	@13.00	=	26.00
1 CS Carrots, Bunch			
Bolthouse 24 count	@20.00	=	20.00
1 CS Fennel			
OCEAN MIST 30'S	@18.00	=	18.00
1 CS Zucchini, YELLOW			
FNCY	@6.50	=	6.50

Pd. 68.50
bal. 313.50

~~382.00~~

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***** Duplicate Invoice *****

1	CS	Cukes Mini			
white box			@22.00	=	22.00
1	CS	Celery Hearts			
Nature's Reward Hearts			@24.00	=	24.00
1	CS	Cabbage, Red			
New Jersey / Crates			@14.00	=	14.00
1	CS	Cabbage, Savoy			
JERSEY			@14.00	=	14.00
3	CS	Carrots, Baby Whole 30/1#			
Bolthouse 30-1# baby			@23.50	=	70.50
1	SK	Radishes Bulk 40 lb.			
Oh / Dutch Maid			@19.00	=	19.00
2	CS	Dill - 60 Count			
CA / RATTO			@20.00	=	40.00
1	CS	Dandelion Greens - 24'S			
CA / RATTO			@22.50	=	22.50

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***** Duplicate Invoice *****

1	CS	Endive			
Topless			@12.00	=	12.00
1	CS	Escarole			
Topless			@12.00	=	12.00
1	CS	Eggplant, Baby			
Lakeside			@22.00	=	22.00
2	CS	Mushrooms, Portabello			
STK			@11.00	=	22.00
4	CS	Pickles - Choice			
New Jersey / Bushel			@16.00	=	64.00
3	CS	Spinach, Cello (8/10oz)			
PEAK			@7.50	=	22.50
1	CS	Swiss Chard (Green)			
OHIO / DUTCH MAID / 24'S			@22.00	=	22.00
1	CS	Swiss Chard (Red)			
RATTO 24'S			@22.75	=	22.75

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***** Duplicate Invoice *****

1	CS	Sugar Snap Peas	@20.00	=	20.00
1	CS	Squash, Yellow fancy	@12.00	=	12.00
Farm Fresh					
1	CS	Finger Hots	@15.75	=	15.75
STOCK					
1	CS	Okra	@12.00	=	12.00
CRATE					

485.00

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